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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, NOVEMBER 10, 2009, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.
(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

1. ROLL CALL**2. MINUTES APPROVAL**

- a) Minutes of the September 2009 Regular Meeting (*Attachment A*)

3. EXECUTIVE OFFICER'S REPORT

- a) Open Complaints/Investigations Workload Reports (*Attachment B*)
- b) Proposed 2010 meeting schedule: January 12, March 9, May 11, July 13, September 14, November 9 (subject to change).

4. NEW BUSINESS

- a) Swearing in of new Board Member, Carolyn Norris Rhein
- b) Presentation on a deputy's weaponry, San Diego Sheriff's Department

5. UNFINISHED BUSINESS

- a) Rules and Regulations Update by Chief Deputy County Counsel William D. Smith (handouts provided at the meeting)

6. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes. Speakers will be advised to refrain from using a peace officer's name, if known, pursuant to state confidentiality laws.

7. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).
- b) **Public employee performance evaluation:** Title: Executive Officer/Executive Director

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (13)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

07-008

1. Death Investigation / Positional Restraint – Deputies 1, 2 and/or 3 tasered and then placed Martin Mendoza into maximum restraints.

Recommended Finding: Action Justified

Rationale: No complaint was received in this case. In response to Mendoza's actions, deputies were forced to use the necessary amount of force – a taser - to effect the complainant's arrest. Mendoza was maximally restrained and subsequently placed into a recovery position. The actions taken by San Diego County Sheriff's deputies were legal under the law and within Department policy. There is no evidence of misconduct against any involved personnel.

08-076

1. False Arrest - Deputy 1 arrested the complainant following allegations of shoplifting and discharge of a gun, when in fact the complainant was a victim of battery by the storeowners.

Recommended Finding: Action Justified

Rationale: Based upon victim and witness statements, Deputy 1 had probable cause to arrest the complainant. The complainant subsequently pled guilty to theft. There was no evidence to support the discharge of a firearm by the complainant. The evidence shows the deputy's conduct was lawful, justified and proper.

2. Misconduct/Procedure - Deputy 1 intentionally slammed on the brakes, causing the complainant, who was handcuffed in the backseat of the patrol car, to hit the cage partition and injure his face.

Recommended Finding: Not Sustained

Rationale: There were no witnesses to this event, and Deputy 1 denied the action took place. Sheriff's medical records documented a superficial abrasion to the complainant's forehead and right eyelid that he explained happened during an altercation. According to witness statements, one of the witnesses punched the complainant. There is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure - Deputy 2 failed to return money that was impounded by Deputy 1.

Recommended Finding: Action Justified

Rationale: Deputy 1 impounded \$6.52 from the complainant at the time of his arrest and placed it into evidence at the Campo Sheriff's station. At the time of this complaint, this money had not been returned to the complainant because the case had not yet been adjudicated. However, on September 9, 2008, after the complainant pled guilty, the complainant's money was returned to him as documented with his signature on a Property Release and Receipt. The evidence shows the act occurred but was lawful, justified and proper.

4. Misconduct/Procedure - Deputy 1 failed to take a complaint of battery made by the complainant.

Recommended Finding: Action Justified

Rationale: According to the Arrest Report, the complainant had a cut above his right eye, numerous facial scratches, and a cut on his lip. The complainant told Deputy 1 he was the victim of a battery and wanted to file a report. Deputy 1 acknowledged the information but said he did not do so because there was no evidence to support the claim. Witness testimony stated the complainant was the aggressor and not the victim; therefore, a battery report was not required. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 2 failed to provide the complainant with an arrest report.

Recommended Finding: Action Justified

Rationale: In an effort to protect victims, suspects do not receive crime reports. The complainant was able to obtain the report through his attorney for court purposes. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

08-077

1. False Arrest – California Highway Patrol (CHP) Officers arrested the aggrieved for DUI after she blacked out at the border crossing.

Recommended Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction. The complainant was referred to the California Highway and U.S. Border Patrol.

2. False Reporting – The CHP arrest report contained many inaccuracies.

Recommended Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction. The complainant was referred to the California Highway Patrol and U.S. Border Patrol.

3. Misconduct/Procedure – Border Patrol officers observed or caused \$2,800 worth of damage to the aggrieved’s truck with no explanation.

Recommended Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction. The complainant was referred to the California Highway Patrol and Border Patrol.

4. Misconduct/Medical – Sheriff’s medical staff refused to accept insulin from the complainant for her diabetic daughter.

Recommended Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction over non-sworn personnel, including medical staff. The complainant was referred to the Sheriff’s Internal Affairs unit.

5. Misconduct/Procedure – Deputy 1 did not properly care for the aggrieved’s urine sample.

Recommended Finding: Unfounded

Rationale: There is no evidence of deputy involvement in collecting or maintaining a urine sample for the aggrieved. The arresting CHP officer collected breath evidence for prosecution, and Sheriff’s medical staff collected urine related to the aggrieved’s medical condition. The evidence shows that the alleged act or conduct by deputies did not occur.

08-083 & 08-084

1. Misconduct/Procedure – Deputy 1 improperly classified the complainant into Administrative Segregation.

Recommended Finding: Action Justified

Rationale: The complainant, serving a life sentence for kidnapping, carjacking and rape, was in county jail as a witness in a murder trial and on new rape charges. He had a history of assaulting staff and other inmates and not complying with inmate rules. This history, along with his current charges and recent violent altercations with staff, was the basis for designating the complainant as a safety and security risk and housing him accordingly. Deputy 1’s decision to classify the complainant in Administrative Segregation was lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 1 failed to respond to the complainant’s Inmate Grievance submitted four months ago.

Recommended Finding: Unfounded

Rationale: Sheriff Department records showed the complainant filed no grievances, and the complainant submitted no evidence to the contrary. The evidence showed the alleged conduct did not occur.

3. Excessive Force –Deputies 2-7 attacked and injured the complainant while inspecting his cell.

Recommended Finding: Action Justified

Rationale: The complainant disobeyed deputy commands to remain facing a wall and moved toward his cell mate and deputies with an object in his hand. Deputies pushed him to the ground. Refusing to obey deputy commands to stop resisting, he thrashed, kicked and refused to show his hands. Deputies used body weight to press the complainant’s head, torso, shoulders and legs to the ground so that he could be placed in handcuffs and leg chains. The complainant sustained scrapes and bruises on his face and hand. Deputies’ use of force was appropriate and necessary to overcome the complainant’s active resistance and was lawful, justified and proper.

08-097

1. Misconduct/Procedure – Officer 1 imposed an unreasonable “5 bag quota” for picking up trash in a work detail.

Recommended Finding: Action Justified

Rationale: Parameters for work assignments vary according to the task. Requiring all public service work participants to fill 5 bags in a day of picking up trash was reasonable and achievable, as participants demonstrated. The evidence showed the alleged conduct occurred but was lawful, justified and proper.

2. Misconduct/Procedure – Officer 1 did not apply the hours the complainant worked toward his community service requirement.

Recommended Finding: Action Justified

Rationale: Probation officers tasked with supervising crews performing public service work have authority and discretion to administer these programs, which includes denying credit for objectionable behavior, poor performance, and failure to obey rules and reasonable orders. Program participants are not allowed to be disrespectful, condescending, offensive, or to challenge a staff member's authority. The complainant and nine other public service work participants were to fill 5 bags of trash each. The complainant admittedly filled 2.5 bags. When Officer 1 confronted the complainant, he objected, stating that his fewer bags were heavier than the others' bags and that she should have required 50 bags for the group. Officer 1 denied the complainant credit for the day because he failed to meet performance standards and to follow instructions and reportedly told her she didn't know how to do her job. Officer 2 upheld the denial. While the denial of credit was objectionable to the complainant, Officers 1 and 2 had the grounds, authority and discretion to do so. The conduct was lawful, justified and proper.

3. Misconduct/Truthfulness –Officer 1 told Officer 2 the complainant was argumentative, disrespectful and performed below standard.

Recommended Finding: Action Justified

Rationale: See #2 above.

4. Misconduct/Procedure – Officer 2 denied the complainant's request to receive credit for the hours he worked.

Recommended Finding: Action Justified

Rationale: See #2 above.

08-098

1. Excessive Force/Other – Deputy 1 jabbed the complainant in the chest.

Recommended Finding: Unfounded

Rationale: Video evidence showed the complainant became impatient as he waited to pass through weapons screening at the court house. The complainant, a process-server who is not a court employee or law enforcement officer, left the line for the public magnetometer and moved quickly through the adjacent magnetometer reserved for employees and law enforcement officers. He walked into Deputy 1's outstretched hand as she stood directly in front of him and attempted to stop him from advancing. Deputy 1, tasked with security screening at a busy court house entrance, was justified in her actions. Video evidence showed Deputy 1 did not jab or shove the complainant as alleged.

2. Misconduct/Intimidation – Deputy 1 told the complainant she would bar him from the court house.

Recommended Finding: Action Justified

Rationale: Until a commissioner ordered otherwise, the complainant was barred from the court house because he disregarded security protocol: he was not authorized to enter the court house through the employee- and law enforcement-only magnetometer but did so anyway. Surveillance video showed he brushed off Deputy 1's attempts to investigate why he came through the wrong magnetometer. The complainant stated this was "easier" for him, that he routinely did so and would continue to do so when Deputy 1 was not there, and refused to provide details about his employment. Video also corroborated deputy reports that when told to leave the court

house, he challenged Deputy 1's authority, refused to leave and did not leave until a male deputy stood up to escort him out. Deputy 1's actions were lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 1 was sarcastic to the complainant, asking “Oh, are you injured? Should I call an ambulance?” after the complainant told her she should not have shoved him.

Recommended Finding: Unfounded

Rationale: Deputy 1 denied the allegation. Differences between the complainant's account and surveillance video and witness statements showed the complainant's account was not credible. Evidence showed this allegation did not occur.

4. Misconduct/Intimidation – Deputy 1 told the complainant he would not be in business “for a twenty-first year.”

Recommended Finding: Unfounded

Rationale: See #3 above.

5. Misconduct/Procedure – Deputy 1 refused to call a supervisor when the complainant asked to speak with one, stating “You're lucky, he's out today...you wouldn't want to talk to him.”

Recommended Finding: Unfounded

Rationale: See #3 above.

6. Misconduct/Intimidation – Deputy 1 told the complainant, “I should have taken you down to the ground at security check.”

Recommended Finding: Unfounded

Rationale: See #3 above.

7. Misconduct/Procedure – Deputy 2 told the complainant he could never return to the court house.

Recommended Finding: Action Justified

Rationale: See #2 above. Deputy 2 stated he told the complainant he could not return to the court house except pursuant to a subpoena.

8. Misconduct/Truthfulness – Deputy 1 falsely told Deputy 2 that the complainant had skirted the security screening area.

Recommended Finding: Unfounded

Rationale: See #3 above.

9. False Arrest- Deputy 1 arrested the complainant for PC 602.1 (b) Interference with a business establishment.

Recommended Finding: Action Justified

Rationale: See #2 above. Also, the complainant returned to the courthouse two days after being told not to come back.

10. Misconduct/Retaliation – Deputy 1 arrested the complainant because he complained to Internal Affairs.

Recommended Finding: Unfounded

Rationale: See #3 above.

11. Misconduct/Harassment – Deputy 1 asked one of the complainant's associates several questions about the complainant.

Recommended Finding: Action Justified

Rationale: Deputy 1 admittedly asked one of the complainant's associates about him after the complainant admittedly refused to answer her questions about his employer or business in the court house. There was nothing illegal or against Sheriff's procedures for a law enforcement officer tasked with court security to seek information about the complainant, based on his actions and statement that he would continue to circumvent security protocol. Deputy 1's actions were lawful, justified and proper.

12. Misconduct/Harassment – Deputy 1 circulated a copy of the complainant's ID to another court houses so deputies could question anyone doing business with the complainant.

Recommended Finding: Action Justified

Rationale: Another deputy circulated information about the complainant improperly entering the employee- and law enforcement-only magnetometer to alert other deputies that the complainant said he would do it again and to remind them of court security protocol. This was lawful, justified and proper.

08-099

1. Misconduct/Harassment - Unidentified deputies "harassed" the complainant, a pro per inmate, for several months about the amount of legal paperwork in his cell.

Recommended Finding: Not Sustained

Rationale: There were no warnings documented, and staff was unable to identify involved personnel to investigation this allegation further. There was insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure - Deputy 1 and unidentified deputies told the complainant he must "throw away" or mail excess legal documents to someone to store.

Recommended Finding: Action Justified

Rationale: Inmate rules and regulations permit a limited type and amount of personal belongings in cells. Excess property must be disposed of or mailed out of the jail at the inmate's expense. A reminder of inmate rules and regulations, giving the complainant time to address the problem, was lawful, justified and proper.

3. Misconduct/Procedure - Unidentified deputies discarded grievances and legal and medical paperwork.

Recommended Finding: Not Sustained

Rationale: Excess property is discarded during regular cell inspections. This investigation was not able to determine what or how much property was possessed, marked, or discarded. A grievance response noted that on one occasion the complainant said his paperwork was not marked but hidden in the pages of stacks of magazines, which deputies discarded as excess property. There is insufficient evidence to prove or disprove this allegation.

4. Misconduct/Retaliation - Deputy 2 and unidentified deputies allowed the complainant's legal paperwork to be discarded in retaliation for the complainant refusing an order to discard his legal documents.

Recommended Finding: Not Sustained

Rationale: See #3.

5. Misconduct/Procedure - An unidentified deputy refused to sign the complainant's grievance.

Recommended Finding: Not Sustained

Rationale: Staff was unable to identify involved personnel to investigate further. There is insufficient evidence to prove or disprove the allegation.

08-100

1. Excessive Force – Deputy 1 punched the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant is no longer in Sheriff's custody and could not be located to complete an investigation.

2. Misconduct/Medical – Unidentified staff refused to give the complainant his medication. NOTE: The Review Board does not have jurisdiction over non-sworn staff. This allegation was referred to the Sheriff's Department.

Recommended Finding: Summary Dismissal

Rationale: The Review Board does not have jurisdiction over medical staff or medical issues.

3. Misconduct/Retaliation – Deputy 2 transferred the complainant to another jail to “silence” his complaints against staff.

Recommended Finding: Summary Dismissal

Rationale: The complainant is no longer in Sheriff's custody and could not be located to complete an investigation.

4. Misconduct/Procedure – Deputy 2 denied the complainant access to the law library.

Recommended Finding: Summary Dismissal

Rationale: The complainant is no longer in Sheriff's custody and could not be located to complete an investigation.

5. Misconduct/Retaliation – Deputy 2 placed the complainant in isolation as punishment for filing a grievance.

Recommended Finding: Summary Dismissal

Rationale: The complainant is no longer in Sheriff's custody and could not be located to complete an investigation.

6. Misconduct/Procedure – Deputy 2 did not provide the complainant with the results of his grievances.

Recommended Finding: Summary Dismissal

Rationale: The complainant is no longer in Sheriff's custody and could not be located to complete an investigation.

09-032

1. Misconduct/Procedure - Deputy 1 interfered in a civil matter between the complainant and his estranged wife.

Recommended Finding: Action Justified

Rationale: Deputies frequently are asked to “preserve the peace” to prevent violence in potentially volatile civil matters such as vehicle repossessions, tenant evictions and child custody exchanges. Sheriff's records showed Deputy 1 responded to a request from the complainant's estranged wife to “preserve the peace” while she drove to the complainant's home and obtained his signature on a joint tax refund. The evidence showed the deputy's conduct was lawful, justified and proper.

2. Misconduct/Intimidation - Deputy 1, under color of authority, ordered the complainant to endorse his state tax refund check, which the deputy took from the complainant.

Recommended Finding: Unfounded

Rationale: The evidence showed Deputy 1, tasked with “preserving the peace,” stood by while the complainant’s estranged wife handed the complainant a jointly issued tax refund check to sign. The complainant signed the check, which the estranged wife kept. The check, made out to both parties, was mailed to their post office box. The evidence showed the alleged misconduct did not occur.

3. Criminal Conduct – Deputy 1 and the complainant’s estranged wife unlawfully possessed the complainant’s legal mail.

Recommended Finding: Unfounded

Rationale: See # 2 above.

09-042

1. Misconduct/Discourtesy: Deputy 1 was “rude, mean, aggravated.”

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied being rude, mean or aggravated toward the complainant. There is no independent evidence of the contact, and this allegation is subjective. There is insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure: Deputy 1 refused to let the complainant retrieve her keys and a prescription for the drugs he had seized.

Recommended Finding: Action Justified

Rationale: Deputy 1 admittedly did not let the complainant into the house because he had already searched the area where she said the prescription was and didn’t find one. Additionally, the complainant gave conflicting statements about having a prescription for the drugs/whether the drugs were hers. The complaint’s statement to the Review Board was that she later produced a prescription for one of the seized drugs but a second was still outstanding. Because everyone at the house was arrested on drug charges or a warrant, there was no one to leave the complainant’s dogs with. Deputy 1 shut the complainant’s dogs inside the house and then locked the door at the complainant’s request. Afterward, it was discovered that the complainant’s house keys were inside. The investigation showed no wrongdoing, and Deputy 1’s actions were lawful, justified and proper.

3. False Arrest: Deputy 1 arrested the complainant for drug possession even though she had a prescription.

Recommended Finding: Action Justified

Rationale: The complainant agreed to submit to law enforcement searches as a condition of probation in a drug conviction. Responding to a complaint of drug sales and use at the complainant’s residence, Deputy 1 searched her home and found several pills of controlled substances in the complainant’s purse and bedroom. There were no corresponding prescription bottles or a prescription for the drugs. The complainant gave conflicting statements about having a prescription for the pills and whether the pills were hers. Both of the complainant’s companions were arrested, one on drugs charges, the other on a DUI warrant. Deputy 1’s actions were lawful, justified and proper.

09-065

1. Death Investigation/Inmate Suicide - Deputies found an inmate hanged by a bed sheet in his cell during a routine security check.

Recommended Finding: Action Justified

Rationale: The inmate, linked by DNA and modus operandi to sexually attacking and robbing several women at knifepoint, was jailed after an arrest widely reported in media. He was routinely screened for medical and mental health issues, as well as suicidal thoughts, with no issues noted. He was housed in a cell by himself in

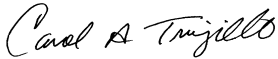
protective custody because of his violent and high-profile charges. Deputies conducting routine hourly checks found him in his cell hanging from a bunk by a bed sheet. Deputies, medical personnel and emergency responders attempted to revive him without success. The actions of deputies were lawful, justified and proper.

09-088

1. Misconduct/Procedure - Deputy 1 threatened to arrest the complainant for grand theft instead of allowing her to maintain possession of a boarder's horse, which prevented her from pursuing a livestock lien for nonpayment of board.

Recommended Finding: Action Justified

Rationale: Deputy 1 responded to a preserve the peace call involving a boarder and a stable owner -- locking up/removing a horse in a dispute over money owed for boarding/training services. Deputy 1 denied threatening the stable owner with arrest for theft of the horse, and the evidence conflicted about how a theft arrest was raised. The stable owner released the horse to its owner, who removed the horse and her belongings. Deputy 1 preserved the peace, was not authorized to adjudicate the parties' civil dispute, and had no duty to enforce a lien without a court order, which the stable owner did not have. Even though the outcome was unsatisfactory to the stable owner, Deputy 1's actions were lawful, justified and proper.



CAROL A. TRUJILLO
Executive Officer

CAT/ab
Attachments